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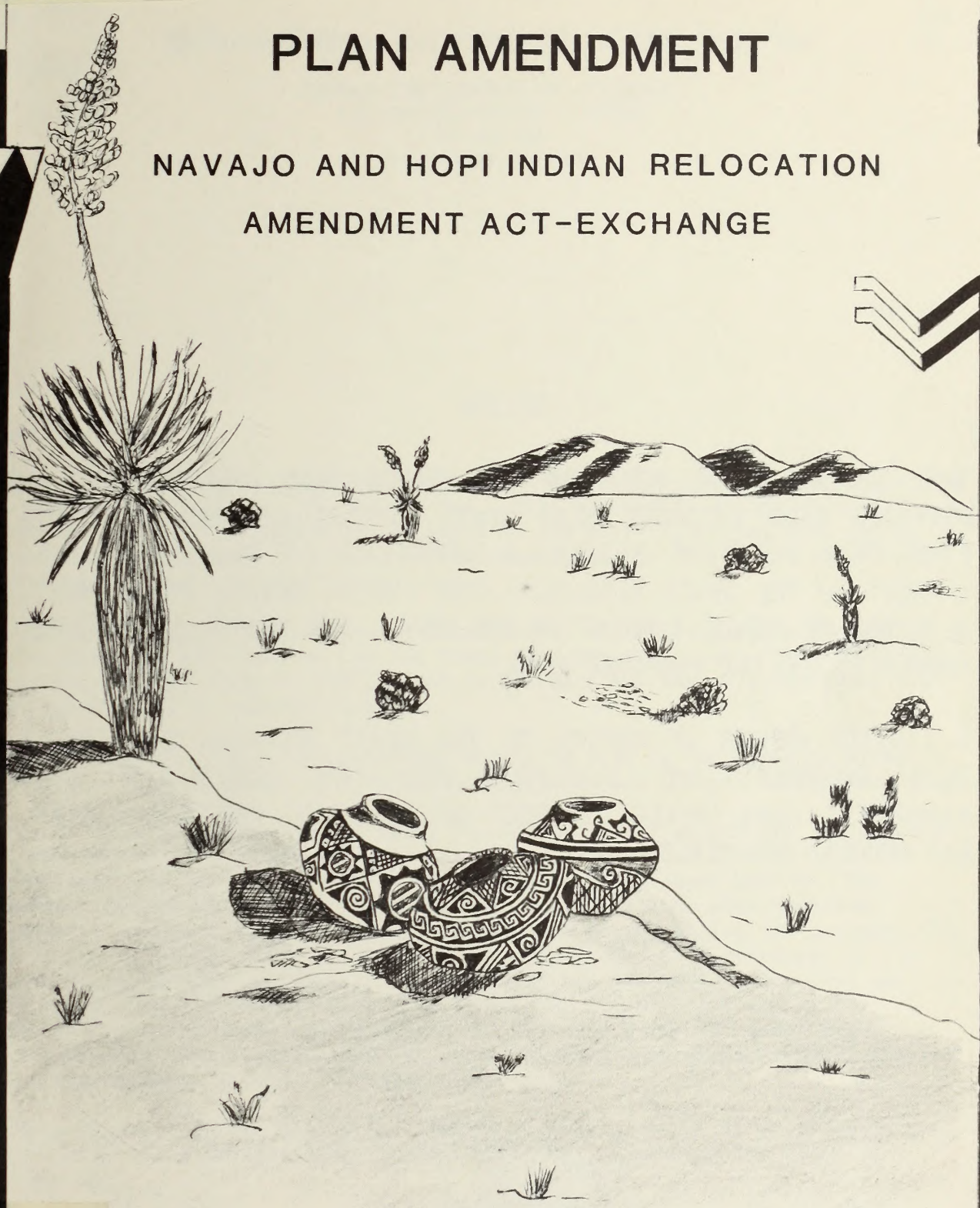
SOUTHERN RIO GRANDE PLAN AMENDMENT

NAVAJO AND HOPI INDIAN RELOCATION AMENDMENT ACT-EXCHANGE



MAY 1985

FINAL

U S DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

LAS CRUCES DISTRICT OFFICE

HD
243
.N3
L37
1985b

NOTICE

THIS IS THE FINAL SOUTHERN RIO GRANDE PLAN AMENDMENT FOR A PROPOSED LAND EXCHANGE NEAR SANTA TERESA, NEW MEXICO. THIS FINAL PLAN AMENDMENT INCLUDES A SUMMARY OF THE DRAFT AMENDMENT, CHANGES TO THE DRAFT RESULTING FROM PUBLIC REVIEW AND COMMENT, A RECORD OF PUBLIC COMMENT ON THE DRAFT, THE RESPONSES TO THOSE COMMENTS, AND THE PROPOSED PLAN.

A LIMITED NUMBER OF COPIES OF THE DRAFT SOUTHERN RIO GRANDE PLAN AMENDMENT ARE AVAILABLE FROM THE BUREAU OF LAND MANAGEMENT, LAS CRUCES DISTRICT OFFICE, 1800 MARQUESS STREET, LAS CRUCES, NEW MEXICO, 88005.

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IN REPLY REFER TO:
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NM 58259

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L37
1985b

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
LAS CRUCES DISTRICT OFFICE
P.O. Box 1420
Las Cruces, New Mexico 88001

May 1985

Dear Reviewer:

This is the Final Southern Rio Grande Plan Amendment analyzing a proposed land exchange near Santa Teresa, New Mexico. This Final Plan Amendment includes a summary of the draft amendment, changes to the draft resulting from public review and comment, a record of public comment on the draft, the responses to those comments, and the Proposed Plan.

The Final Plan Amendment contains a refinement of the Proposed Action which is the preferred alternative. In the Final Plan Amendment, the proposal is to exchange 21,231 acres of public land in Southern New Mexico for private land of equal value in northern Arizona.

Comments on the Final Plan Amendment should be sent to the District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005.

Anyone wishing to protest the Plan, should send their protest to the Director (200), Bureau of Land Management (Room 5654), 18th and C Streets NW, Washington, D. C. 20240, by the end of the 30-day protest period. The protest should include the following information (1) the name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue or issues being protested; (3) a statement of the part or parts being protested; (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records; and (5) a concise statement explaining why the BLM New Mexico State Director's decision is wrong.

Protests are received for 30 days following this notice. If no protests are received, the Final Plan will be implemented 30 days after the Final is published.

Sincerely yours,

Daniel C. B. Rathbun
District Manager

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FINAL

SOUTHERN RIO GRANDE PLAN AMENDMENT

NAVAJO AND HOPI INDIAN RELOCATION AMENDMENT ACT-EXCHANGE

(NM 58259)

Prepared by

United States Department of the Interior
Bureau of Land Management
Las Cruces District Office
1800 Marquess Street
Las Cruces, New Mexico 88005

May 1985

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

FINAL

SOUTHERN RIO GRANDE PLAN AMENDMENT

Abstract: The Southern Rio Grande Plan Amendment analyzes the impacts that would occur in southern Dona Ana County, New Mexico, as a result of two alternatives involving the transfer of public land to private ownership. The two alternatives considered are: (1) Proposed Action which involves the exchange of 21,231 acres of public land in southern New Mexico for a tract or tracts of private land of equal value in northern Arizona; and (2) No Action in which the selected land would remain in Federal ownership. The Proposed Plan contained in the Final Amendment is to exchange 21,231 acres of public land with patent restriction to ensure cultural values are protected. The Proposed Plan was developed following a 30-day review of the Draft Plan Amendment, which described and analyzed the Proposed Action and a No Action Alternatives.

Type of Action: ( ) Administrative (X) Legislative

Contact for This Plan Amendment: Marvin James
Bureau of Land Management
Las Cruces District Office
1800 Marquess Street
Las Cruces, NM 88005

Telephone: Commercial: (505) 525-8228
FTS: 571-8350

Dates of Comment/Protest Period: MAY 1 - 31 1985

Recommended:

District Manager
Las Cruces District Office
Las Cruces, New Mexico

Approved:

State Director, New Mexico

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TECHNICAL REPORTS

(Technical Reports are available for review at the Las Cruces District Office)

I. Preliminary Cultural Report of Selected Land

II. Mineral Report of Selected Land

SUMMARY OF THE DRAFT AMENDMENT

INTRODUCTION

Under the provisions of the Navajo and Hopi Indian Relocation Amendment Act of 1980, the Bureau of Land Management (BLM), Las Cruces District proposes to exchange 21,231 acres of public land (selected land) in Dona Ana County, New Mexico for a tract or tracts of private land (offered land) of equal value in Apache County, Arizona. The private land thus acquired would become part of the Navajo Reservation as provided in the Act.

The selected land consists of two separate tracts located near Santa Teresa, New Mexico and approximately one to five miles west and northwest of El Paso, Texas city limits. The offered land consists of two separate ranches located east of Sanders, Arizona.

In order for the land exchange to be considered within the context of the Bureau Planning System as required by regulations, the Southern Rio Grande Plan is being amended.

ALTERNATIVES INCLUDING THE PROPOSED ACTION

Proposed Action

The Proposed Action is to exchange 21,231 acres of public land in Southern Dona Ana County, New Mexico for a tract or tracts of privately-owned land of equal value in Apache County, Arizona. The exchange would be on an equal value basis and not on an acre-for-acre basis. The exchange would involve only the surface estate and non-leasable mineral estate of the selected land. The leasable mineral estate and geothermal resources would be reserved to the United States.

No Action Alternative

Due to the requirements of the legislation under which the exchange would be carried out, the only alternative to the Proposed Action is No Action. Under the No Action Alternative, the selected land would be retained in Federal ownership.

ENVIRONMENTAL CONSEQUENCES

Proposed Action

Mineral Resources

There would be no impacts to leasable minerals since these would be retained in Federal ownership. There would be no impacts to locatable minerals due to the low mineral potential of the area.

Livestock Grazing

Livestock grazing on 21,231 acres of public land would be eliminated resulting in a loss of 107 animal units (AUs) or 1,284 animal unit months (AUMs). Ninety-seven percent of the James A. Wilson Allotment would be lost from grazing, effectively eliminating the ranching operation on public land. The Beacon and La Union Allotments would loose a total of 46 AUs or about 8 percent of the ranching operation on the two allotments.

Water Resources

There would be a potential split ownership of water rights and land surface. If this occurred, well-site locations, rights-of-way for pipelines, etc., would have to be negotiated with the landowner.

Cultural Resources

Cultural resources would pass out of Federal ownership. Impacts would be mitigated on 20,251 acres through intense field analysis and documentation. Patent restrictions would be imposed on the remaining 980 acres requiring archaeological investigations prior to any form of disturbance.

Wildlife and Threatened or Endangered Species

There would be no impacts to wildlife species or wildlife habitat. There are no threatened or endangered species on the selected land.

Recreation

Recreation use on 21,231 acres of public land would be lost; however, new access could be provided to adjacent public land as a result of development of the selected land.

Other Land Uses

There would be no impacts to the Dona Ana County-Santa Teresa Airport. The right-of-way (ROW) for the road along the railroad would not be impacted and would provide access to the selected land and adjacent public land. El Paso Electric 345 KV powerline would limit use on land adjacent to the powerline ROW. The 60-foot border withdrawal would limit some uses along the international boundary. Public land would no longer be available in T. 28 S., R. 3 E., Section 17 to the Gadsden Independent School District for a possible future high school site.

Social and Economic Conditions

There would be no impacts to total population or to the structure or source of employment in Dona Ana County.

The James A. Wilson Estate Allotment would be closed out. The loss of the ranching opportunity would mean the loss of a way of life which would affect the current owner's social values. Oil and gas rental payments would

continue. Approximately $14,360 annually in payments in lieu-of-taxes to Dona Ana County would be lost; however, approximately $35,900 in tax revenue annually would be gained on the undeveloped land.

No Action Alternative

Under the No Action Alternative, the selected land would remain in Federal ownership. There would be no impacts to any of the resources. Present situations and conditions would continue.

PROPOSED PLAN

HOW THE PROPOSED PLAN WAS SELECTED

The Proposed Plan was selected by a team composed of the District Manager, Area Manager, Team Leader, and appropriate team specialists within the Las Cruces District, and was reviewed by the State Director. The Proposed Plan was selected based on (1) the issue of which public land, if any, was suitable for exchange under the Navajo and Hopi Indian Relocation Amendments Act (NHIRAA); (2) public meetings and comments received during the 30-day public review period; (3) criteria used to evaluate alternatives; and (4) the analyses developed on the previously formulated alternatives.

DESCRIPTION OF THE PROPOSED PLAN

The Proposed Plan is the Preferred Alternative presented in the Draft Amendment. The Plan is to exchange 21,231 acres of public land in Southern New Mexico for a tract or tracts of private land of equal value in northern Arizona, with a patent restriction that would be placed on 980 acres which were found to have National Register eligible cultural values.

LAND ADDED TO THE PROPOSED EXCHANGE

An additional 1,435 acres of public land in the Hillsboro, New Mexico area has been added to the exchange proposal. This public land has been identified as suitable for disposal in the original Southern Rio Grande Land Use Plan (BLM 1982) and is not reanalyzed in this plan amendment. See Appendix A of this document for complete legal descriptions.

The current proposal involves 21,231 acres discussed in this plan amendment plus the 1,435 acres, for a total of 22,666 acres of public land that would be exchanged for 41,166 acres of private land of equal value in northern Arizona.

CONSISTENCY

There is one known inconsistency between the Proposed Plan and officially approved and adopted resource-related policies and programs of the Federal agencies, State and local governments, and Indian tribes. The BLM and Dona Ana County signed a Memorandum of Understanding (MOU) on April 21, 1982. The BLM agreed to consult with Dona Ana County prior to any disposition on use authorization on public land adjacent to the Santa Teresa Airport. Based on the MOU, the County expressed opposition to the proposal on the grounds that the exchange could interfere with future expansion of the airport. The Federal Aviation Administration made a determination that they could not support more than the 1,800 acres that was conveyed in 1982 from the BLM to Dona Ana County for the Dona Ana County-Santa Teresa Airport (see Appendix B).

At the present time, BLM, Las Cruces District, and Dona Ana County are revising the MOU to consider land to the north and northwest of the airport boundary to meet future needs of the county.

CONSULTATION AND COORDINATION

INTRODUCTION

This chapter summarizes the public participation and coordination efforts conducted in the preparation of the Draft and Final Plan Amendments. The consultation, coordination, and public involvement undertaken during development and writing of the plan are described. This chapter also contains the public review comments on the Draft Plan Amendment and responses to those comments.

A list of persons involved in the preparation of the Plan Amendment is shown in Table 4-1 of the Draft.

SCOPING ACTIVITIES

During development of the Southern Rio Grande Plan Amendment, the planning process and the proposal contained in the amendment were presented to the public at meetings and through news releases. Many individual contacts were made via telephone, letters, and informal meetings. On these occasions, the public was also invited to contribute their knowledge, ideas, and proposals concerning the Plan Amendment.

Information concerning the proposal and a notice of public meetings were mailed to potentially interested organizations and individuals in July and October, 1984. Public meetings about the Plan Amendment were held on July 24, and November 19, 1984 in Las Cruces, New Mexico.

A Notice of Intent for a plan amendment to consider the exchange and announcement of the July public meeting was published in the Federal Register on July 6, 1984. This notice also contained a Notice of Realty Action with a listing of the selected land in New Mexico. An amended notice showing land added to the original proposal was published on October 2, 1984. A second amended notice listing the offered land in Arizona, as well as the selected land in New Mexico and announcing the November public meeting, was published in the Federal Register on October 30, 1984. A Notice of Realty Action for the proposed exchange was published in the Las Cruces Sun News and El Paso Times on November 1, 8, and 15, 1984.

A Notice of Realty Action to include 1,435 acres of public land near Hillsboro, New Mexico as part of the exchange was published in the Herald, a Truth or Consequences newspaper, on March 6, 13, and 20, 1985, and in the Federal Register on March 12, 1985.

Information was solicited from the New Mexico Department of Game and Fish and the State Heritage Program concerning threatened or endangered species on the selected land. Meetings were held with the State Historic Preservation Officer and his representative to coordinate cultural resource survey procedures on the selected land.

PUBLIC REVIEW OF THE DRAFT PLAN AMENDMENT

The Draft Plan Amendment was made available to the public on February 21, 1985. The 30-day public comment period began February 21, and ended March 23, 1985. Approximately 250 copies of the Draft were sent to those interested organizations, individuals, and government agencies listed below. An asterisk indicates those who commented on the Draft. A copy of the Final Plan Amendment will be sent to all persons making comments on the Draft and to anyone requesting a copy.

Federal Agencies

Department of Agriculture
- Farmers Home Administration
- Soil Conservation Service

Department of the Interior
- Bureau of Indian Affairs
- Navajo-Hopi Relocation Commission
- Bureau of Land Management
  - Arizona State Office
  - Indian Project Office
- Bureau of Reclamation
  - State Water Resources
  - Rio Grande Project Office
- *Fish and Wildlife Service
- Geological Survey

Department of Justice
- Border Patrol

Department of Transportation
- Federal Aviation Administration

*Environmental Protection Agency

International Boundary and Water Commission

Congressional Delegation and New Mexico State Legislators

U.S. Senator Jeff Bingaman
U.S. Senator Pete Domenici
U.S. Congressman Joe Skeen
State Senator, Ellen L. Steele
State Senator, Harold Foreman
State Senator, Fernando Macias
State Representative, Patricia Dominguez
State Representative, Ralph Hartman
State Representative, Ruben Smith
State Representative, Mary Thompson
State Representative, Larry Sheffield

New Mexico State Agencies

*Agriculture Department
Attorney General's Office

New Mexico State Agencies

Department of Finance and Administration
- Historic Preservation Division
- Office of Cultural Affairs

Department of Game and Fish
*Department of Natural Resources
- State Heritage Program Division

Economic Development and Tourism Department
Governor's Office
Highway Department
Human Services Department
- Office of Indian Affairs

Land Office
- Commissioner's Office

Office of Indian Affairs
State Engineer, Water Rights Division

Local and Regional Government

Apache County, Arizona
*Dona Ana County, New Mexico
Dona Ana County Planner
El Paso County, Texas
El Paso City Commissioners
El Paso County Planner
El Paso Electric Company
*El Paso Water Utilities Public Service Board
Gadsden Independent School District
Las Cruces Chamber of Commerce
Mayor, City of Las Cruces
Mayor, Town of Anthony
Navajo Tribe
New Mexico Border Commission
Southern Rio Grande Council of Governments

Others

*Dona Ana County Associated Sportsman, Inc.
Dona Ana County Historical Society
El Paso Archaeological Society
El Paso Wilderness Preservation Committee
*Interested Individuals
Las Cruces District Advisory Council
Las Cruces District Grazing Advisory Board
Local and Regional Newspapers
Local and Regional Radio and Television Stations
*Mesilla Valley Audubon Society
Natural Resources Defense Council
New Mexico Cattle Growers Association
New Mexico Farm and Livestock Bureau
New Mexico State University
- Cultural Resources Management Division
- Department of Range Science
- Range Improvement Task Force
- Water Resources Research Institute

*Santa Fe Pacific Railroad Co.
*Sierra Club
Society for Range Management
Southern Pacific Railroad

PUBLIC COMMENTS AND RESPONSES

During the public comment period (February 21 through March 23, 1985), twenty letters from the public and agencies were received. All written comments were reviewed to determine if they addressed either the adequacy and accuracy of the Draft Plan Amendment or the merits of the alternatives. Ten of the letters addressed resource values and have been reproduced in their entirety. Responses have been made to all substantive comments in these letters.

Five letters addressed both resource values and the appraisal of the selected land. These letters have been reproduced in their entirety, however, only those comments pertaining to resource values have been responded to herein.

Five other letters commented only on the preliminary appraisal of the selected land or the appraisal process. These five letters are not included in the Final Plan Amendment. Those letters as well as other comments on the appraisal mentioned above have been responded to by individual letter. The appraisal process is not a part of the plan amendment in that the amendment is not dependent upon completion of the appraisal. Upon completion of the amendment which determines if the land is suitable for disposal, the land may disposed of under applicable laws. An appraisal is then completed to determine fair market value of the subject land. In the case of an exchange such as one proposed under the Navajo and Hopi Indian Relocation Amendment Act (NHIRAA), an appraisal is completed for both the selected and offered land. This appraisal is used to determine how much land constitutes equal value and thus, how much land is actually transferred. The plan amendment is necessary in order for the proposed exchange to be fully considered.

Individuals and organizations who sent letters which wholly or in part addressed resource values are listed in Table 4-2 and have been reproduced on the following pages. Substantive comments are indicated by a heavy black line and are consecutively numbered. The responses are presented adjacent to the comments in each letter.

TABLE 4-2

COMMENT LETTERS RECEIVED

Assigned Number	Commenter
1	D. Schuhman
2	Santa Fe Pacific Railroad Co.
3	State Clearinghouse
4	Chip Johns
5	Mesilla Valley Audubon Society
6	John McFall
7	U.S. Environmental Protection Agency
8	N. M. Department of Agriculture
9	U. S. Fish and Wildlife Service
10	Sierra Club
11	N. M. Natural Resources Department
12	El Paso Water Utilities Public Service Board
13	Rodney J. Bunsen
14	Dona Ana County Associated Sportsman, Inc.
15	Dona Ana County

1

February 25, 1985

Marvin James
BLM-Las Cruces District Office
PO Box 1420
Las Cruces, NM 88004

SUBJECT: Land Swap, Crowder

Dear Sir:

In seeing the article in the El Paso Times of Friday, Feb. 22, I feel compelled to comment. I had also seen an earlier article Times about the pending swap, and waited to see what might develop. I am commenting on behalf of myself only, not any group.

The amount of land in question, 23,251 acres in the Santa Teresa area alone, is a very large tract and represents a potentially large city, particulary when combined with the already planned Santa Teresa development. I wonder whether any amount of consideration was given to the impact on Dona Ana County water resources, traffic congestion, airpollution, water table pollution, and all the host of other things that would result from a city the approximate size of Las Cruces, all under the virtual control of one man, i.e. Charlie Crowder.

1-1 I view the entire Santa Teresa thing as in actuality nothing more than an expansion of El Paso into New Mexico, with all the attendant problems that can cause. If New Mexico and Dona Ana County wish to exercise any control over their water and over the way development is conducted, then it must be done by those whose ultimate interest is being affected, not just by those who stand to make millions of dollars, and with the help of the BLM at that.

1-2 Why must the problems of the Indians in Arizona be ultimately brought to Dona Ana County? Why cannot some other solution be effected which will not involve those of us who live and work here? What did the BLM plan eventually to do with the land that is now to be swapped? If sale was planned at some time in the future, would the apprai sed value be so low as $200 per acre? I doubt it.

I suppose you can surmise by this time that in general I am opposed to the swap. I am sure that my one objection will not affect the outcome, because those like Mr. Crowder with money and friends in high places always win out in the end, and have nothing but contempt for people like myself. I cannot keep from believing that the Public is being ripped off, the Dona Ana County residents are being ripped off and imposed upon, and the water and traffic and air pollution situation will be unnecessarily and perhaps irretrievably complicated. It would be nice if the area in question could be left essentially as is for future generations to enjoy.

1-3 One other side issue is that if Mr. Crowder has control over so much land in the vicinity of the Santa Teresa Airport, he could have an unduly disproportionate influence over the shape of the future at the airport. Every time an airport is situated in an open area with good clear approaches, some developer comes along and screws it up, and the new residents then object to airplanes flying over and endangering them.

All I can ask is the BLM consider carefully all the angles of this transaction and please get our money's worth, and cancel it if you can.

Sincerely, D. Schuhmann, Box 391, WSMR, NM 8800?

7

1-1 At the present time it is unknown what the exchange proponent plans for the subject land. The subject land is 1 to 5 miles west of a major population growth corridor and will be affected by continued growth. Some development will occur but how much and what type are unknown. All growth and development is controlled by Dona Ana County Planning and Zoning.

The Lower Rio Grande underground water basin is fully appropriated. An equal amount of other water rights must be retired elsewhere to offset new uses. This restriction may affect potential development.

1-2 The NHIRAA states that land in New Mexico may be exchanged for private land within the 18 mile Navajo Reservation enlargement area. Mr. Crowder has selected land adjacent to his current holdings.

Under the Southern Rio Grande Land Use Plan, the subject land would remain in Federal ownership, managed for multiple use. Except for a few small parcels which could be transferred for public purposes, there were no disposal plans for the selected land. However, as stated in 1-1 above, the lands are adjacent to a major population growth corridor and would likely be affected by continued growth. It is possible such growth would cause the subject land to be requested for future community expansion.

1-3 The Dona Ana County Santa Teresa Airport will have an effect on development in this area. The presence of the airport increases the potential for industrial and commercial development. Dona Ana County has established a height zoning ordinance for approach (clear zones), transitional, horizontal, and conical zones. The County also plans to implement zoning which will restrict land uses, pursuant to recommendations for land use compatibility planning by the FAA. All subsequent uses of adjacent land will be subject to these regulations.

Santa Fe Pacific Railroad Company

A SANTA FE INDUSTRIES COMPANY
P.O. Box 3588
Albuquerque, New Mexico 87190
(505) 262-2211

February 27, 1985

Mr. D. Dean Bibles, State Director
U. S. Bureau of Land Management
Arizona State Office
3707 North Seventh Street
Phoenix, Arizona 85104

Mr. Charles W. Luscher, State Director
U. S. Bureau of Land Management
P. O. 1449
Santa Fe, New Mexico 87501

Re: Protest of Kelsey Ranch and Roberts Ranch Exchanges

Gentlemen:

Santa Fe Pacific Railroad Company ("Santa Fe") has this day filed the enclosed protest in opposition to the Wallace Ranch exchange which the Bureau of Land Management ("BLM") has recently completed under the purported authority of the Navajo and Hopi Indian Relocation Act of 1974, as amended in 1980 ("Relocation Act"). Santa Fe has learned that the BLM Arizona and New Mexico State Offices are currently processing two other similar surface estate exchanges known as the Kelsey and Roberts Ranch exchanges. As you have been advised, Santa Fe owns extensive reserved mineral interests in those two ranches and has the same objections to those "surface only" exchanges as it has to the Wallace Ranch exchange. However, Santa Fe's request that its mineral interests also be acquired by exchange (Exh. 1) was rejected by the Arizona State Director on January 23, 1985 (Exh. 2). Consequently, Santa Fe incorporates by reference the same legal objections to the latter exchanges that it has lodged against the Wallace Ranch exchange. In addition, since we understand that certain federal lands in New Mexico will be exchanged for private surface estates in Arizona, Santa Fe further contends that such an interstate exchange is not authorized by section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1716) which controls these exchanges. 2-1

Santa Fe respectfully requests the BLM (1) to suspend any further processing of the Kelsey and Roberts exchanges until it either purchases or acquires by exchange Santa Fe's reserved mineral interests underlying the surface estate of those ranches and (2) to identify all lands heretofore selected by the Navajo Tribe pursuant to the Relocation Act in which 2-2

2-1 Section 11(a) of the Act of December 22, 1974, as amended by Section 4 of the NHIRAA of 1980, is BLM's exchange authority. Furthermore, Section 11(b) of the Act states:

"(b) A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: provided, that, except as limited by subsection (g) hereof, Bureau of Land Management lands anywhere within the State of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation."

2-2 Santa Fe Pacific Railroad Company has been advised earlier that it is not in the public interest to acquire the subsurface estate nor is it necessary under the Act for the purpose of relocating the Navajo people. Santa Fe Pacific still maintains their right to develop their subsurface estate as they may desire even though the surface ownership may change.

Lands iovolved in this particular exchange proposal were published in the Federal Register, Vol. 49, No. 211, October 30, 1984.

Mr. D. Dean Bibles
Mr. Charles W. Luscher
February 27, 1985
Page Two

2-2 Santa Fe owns reserved mineral interests and all federal lands which the BLM proposes to exchange for such lands.

Respectfully submitted,

R. T. Zitting

Richard T. Zitting
President

RTZ/gm

Enclosure

cc: Mr. Robert F. Burford (w/enclosure)

STATE CLEARINGHOUSE REVIEW (SCS) PROCESS

(Upon completion return this form to the State Clearinghouse)

[x] Application - DRAFT
[ ] Draft Environment Impact Statement
[ ] State Plan

TO: APPLICANT - INFORMATIONAL PURPOSES ONLY - [redacted]

FROM: State Clearinghouse Bureau

The attached proposed action is submitted to you for review and comment. Please return this completed form by 3/21/85

SRA-038		
FILE		
X ACTION	2-11-85	
CR-RECEIVED COPY		

A. Title DRAFT Southern Rio Grande Plan Amendment
2. Applicant ~~Department of Interior/Bureau of Land Management~~
C. State Application Identifier (SAI) No. ~~NM 85 03 01 001~~

1. To the best of your knowledge, does the proposed action conflict with any applicable statute, policy, order, or regulation?
   [ ] Yes If "Yes" please cite conflict on the reverse side.
   [ ] No
2. Describe any concerns, suggestions or means of improving or strengthening the proposed action. Please note comments on reverse side.
3. Does the proposed action duplicate any activities which are geared towards the same target group?
   [ ] Yes If "Yes" please identify on the reverse side.
   [ ] No
4. Identify the masterplan or the comprehensive plan that this proposed action relates to _____
   Is the proposed plan compatible with the plan?
   [ ] Yes
   [ ] No If "No" please cite conflicts on the reverse side.
5. Identify the block grant, if any, which the proposed action relates to.

RECOMMENDED ACTION

_____ Proposed action is supported
_____ Proposed action is supported with recommendations on reverse side
_____ Proposed action is not supported. Note comments on reverse side

Reviewer/Date

Agency

cc: [x] Applicant: This acknowledges receipt of your proposed action and it is now under clearinghouse review.

PREPARED FOODS INC.
P.O. Box 12910 • El Paso, Texas 79913

March 8, 1985

Mr. Marvin James
Chief, Planning and Environmental Assistance Staff
Bureau of Land Management
P.O. Box 1420
Las Cruces, NM 88001

Dear Mr. James,

As requested from the public, these are my thoughts as lease holder and major title holder to over 750 acres of land in or near the Southern Rio Grande Plan Amendment. First, let me bring up blatant inconsistencies as the plan is now proposed.

4-1 Page 2-2, paragraph 5. You state no records of gas or oil wells having been drilled on this or adjacent lands. There was a non-productive well drilled on the La Union in the last 20 years. At the present time Phillips Petroleum has a 25,000 foot well underway. The last report stated was they had passed the 3,000 foot marker. They obviously would not be spending enormous sums of money to drill such a well if they felt, as you have stated in paragraph 5, page 2-2 "... hydrocarbon potential for the area is determined to be low to moderate." As you know it is only a matter of procedure to acquire leasable rights from the U.S. government once you hold surface title.

4-2 Page 2-5, paragraph 1. While it is true there has been no active ranching on the Wilson or La Union allotments since early 1982, you neglected to mention that there has been an active on-going project on the Beacon.

4-3 Page 2-5, paragraph 2. You say there is no livestock water on the selected lands. I hope you don't tell the 45 head of crossbreds that currently use my southwest tank. They might get thirsty.

4-4 Page 2-6, paragraph 7. You state that the property has limited access. There is and has been a "county highway" directly bisecting the Beacon property in question. And directly fronts the La Union.

4-5 Page 2-7, paragraph 2. According to local border patrol officers, the area in question has not been an area that has had a high occurrence of smuggling nor illegal alien crossings as you imply.

... continued.

Phone: 505 / 589-0100

4-1 The Phillips Petroleum Well is located in T. 27 S., R. 1 E., Section 4, approximately 11 miles northwest of the north boundary of the selected land. BLM records in the Las Cruces District Office show that several dry holes have been drilled over the years in southern Dona Ana County. None of these are on the selected land, and all are farther away than the Phillips Petroleum Well.

The selected land has been classified as prospectively valuable for oil, gas, and geothermal resources by the U. S. Geological Survey. Favorable indicators for hydrocarbons include the assumed presence of good source and reservoir rocks at depth, and shows of oil in Tertiary, Cretaceous, Pennsylvanian, and Ordovician units in the Grimm, et al, No. 1 Mobil-32 well, approximately 30 miles northwest of the tract. Factors which may have negatively influenced any hydrocarbon deposits once present include: regional faulting which could allow for disruption and freshwater flushing of oil and gas accumulations; and intrusive and extrusive igneous activity. On the basis of present data, the hydrocarbon potential for the area is determined to be low to moderate.

Rating Criteria: Moderate. The land, by geologic, geophysical, or geothermal inference contains a geologic environment favorable for the occurrence of mineral deposits, even if none are exposed in the study area.

Low. The geologic environment is not favorable for the occurrence of mineral deposits.

Rights to leasable minerals would be retained by the Federal government and would continue to be leased according to established BLM procedures. Acquiring surface rights does not entitle the holder to any mineral rights.

4-2 The Beacon allotment was in active use and being used for livestock grazing when the Draft was written. This information has been added to the Draft (see section entitled "Changes and Additions to the Draft" in this document).

4-3 BLM allotment maps and records do not indicate an authorized livestock water on public land within the selection area. If you have information or records that show otherwise, please let us know.

4-4 A county road runs southwest from Strauss and crosses the northwest corner of the larger tract of selected land. The old Southern Pacific Railroad grade runs roughly east and west through this same tract. Access into the area is limited to these two roads. Access into the area south of the railroad grade is limited to four-wheel drive vehicle or dune buggies.

4-5 The statement in question refers to the greater El Paso area and not just the selected land.

Page 2 of 3

Mr. Marvin James

4-6 Page 2-11, paragraph 2 & 3. While discussing the Beacon and La Union allotment, it should be noted that they have been operated as a single cattle operation for some years and the animal units on the Beacon and La Union are understated by 45 AUs due to a water dispute with the previous lease holder and the owner of a water well. This has been resolved and the BLM is expected to review my application for these animal units and to be re-instated.

4-7 Page 3-2, paragraph 1. You state the reduction of 8,730 acres of the Beacon represents only 41 AUs. Unfortunately cows go where the feed is, and the proposed land has excellent winter feed. Thus, it has a value far in excess of 41 AUs.

4-8 On December 26, 1984, previous to my making a final bid to the Federal Land Bank, on the Beacon and La Union property, Charles Crowder advised me that he had withdrawn his application for this proposed land swap. Be that as it may, I acted on his information and purchased the Beacon/La Union. He has subsequently advised me that the BLM has advised him he could not withdraw his application. Now I am being told that the reduction is only 8% of the total ranch. This could be a serious, if not fatal, financial blow to yet another New Mexico rancher.

4-9 Page 3-3, paragraph 6. You make an unqualified statement when you say "... development of the selected land by the new owner could provide new access to adjacent land." How much more access on the already funded Columbus, NM/Anapra highway does the public need? And why would the public benefit from private ownership?

4-10 Page 3-3, paragraph 7. "... land ownership could help reduce the law enforcement problems along the border" is yet another example of this somewhat biased report that can not be substantiated.

4-11 Page 3-4, paragraph 4. Why trade land that will later have to be purchased with tax payers dollars for a school sight that in theory is already owned by the public!!

4-12 Page 3-4, paragraph 6. You state once again that the new owner of the Beacon/La Union ranch (Charles E. Johns) would be aware of the loss of acreage. This was not so by my conversation at 7:30 a.m. December 26, 1984 when Mr. Crowder emphatically stated he had withdrawn his application.

In summary: I urge the BLM to reverse their present policy and take a "no action alternative" due to my previous statements and to the following.

1. Until the results of the Phillips well being drilled has been made public.

2. A more economical and fair settlement has been made between myself and Mr. Crowder or the BLM.

... continued.

4-6 At the time the Draft Plan Amendment was written, the dispute concerning the base water servicing 45 animal units (AUs) had not been resolved. Since that time, a new base water has been established in the service area, and reinstatement of the 45 AUs is pending. Table 2-1 of the Draft has been changed to show these additional AUs.

4-7 It is recognized that livestock do not graze an allotment uniformly and that some areas are used more heavily than others on a seasonal basis. The 41 AUs used in the Draft represents the average yearlong use of the area which is the grazing capacity assigned each section of land in that portion of the allotment that would be lost under the proposal. This capacity is derived from range survey data.

4-8 As noted in the Draft document, public meetings were held on July 24, and November 19, 1984. Announcement of the proposed exchange was published in the Las Cruces Sun News and El Paso Times on November 1, 8, and 15, 1984. You were on our mailing list and were sent all public information regarding the proposal. Mr. Crowder was never told at anytime by anyone in BLM that he could not withdraw his application. He does have the option of withdrawing his application at his discretion; however, he has not at anytime contacted BLM in regard to withdrawing his application. As a result BLM has acted on the application in good faith and according to applicable laws and regulations.

4-9 It is assumed that once the land is in private ownership, some development would occur. A first step in that development would be the construction of new roads to improve access into the area. It is expected these roads would be opened to public use and would provide some additional access to adjacent public land.

4-10 This paragraph has been deleted from the Draft (see section entitled "Changes and Additions to the Draft" in this document).

4-11 The original Southern Rio Grande Plan (1982) identified 150 acres in T. 28 S., R. 3 E., Section 17 as a possible school site and recommended providing a site at this location when an actual need was shown by the Gadsden Independent School District. At this point, a need for the school site has not been identified nor dicussed as a possible future need by the school district.

4-12 See response to Comment 4-8.

Page 3 of 3

Mr. Marvin James

-loss of 11 miles of fencing.
-winter grazing grounds be replaced. (if not, this may force me to purchase outside feed thru the winter months).
-actual revenue of calves from the 49 AUs decrease.

Thank you for you time in reading my rather lengthy observation. I trust you will act in the best interest of the people.

Sincerely,

Chip (Charles E.) Johns
Executive Vice President
PREPARED FOODS INC.
5701 McNutt Road
Santa Teresa, NM 88008
505-589-0100

MESILLA VALLEY AUDUBON SOCIETY

P.O. BOX 2647, LAS CRUCES, NEW MEXICO 88001

March 10, 1985

Marvin James
Chief, Planning and Environmental Assistance Staff
Bureau of Land Managsment
P. O. Box 1420
Las Cruces, NM 88001

Dear Mr. James:

The Board of Directors of Mesilla Vallsy Audubon Society thanks you for sending the draft Southern Rio Grands Plan Amendment for a proposed land exchange for our review.

This land offers important recreational opportunity (e.g. bird watching, hunting, photography, hiking, etc.) for Las Cruces and El Paso residents. Loss of thie land will put added pressure on adjacent existing public lands.

5-1 We see no information on assessed value of New Mexico BLM lands vs Arizona Indian lands. Why was not Arizona BLM land traded for Arizona Indian land?

We consider that your job is to manage and safegard our public lands. We are concerned that you maintain these lands in public ownership for use by present and future gsnerations.

Sincerely yours,

Lynda Goin

Lynda Goin
Secretary, Mesilla Valley
Audubon Society

5-1 See response to Comment 2-1.

6

P. O. Box 722
Santa Teresa, N.M. 88008

March 17, 1985

Mr. Marvin James
Bureau of Land Management-Las Cruces District
P. O. Box 1420
Las Cruces, N.M. 88004

Dear Mr. James:

You had asked for comments on the massive land swap being engineered by Charles Crowder of Santa Teresa who owns and operates the Santa Teresa Country Club among other enterprises. My knowledge of this multi-million dollar deal is confined to stories in the El Paso media which are based on interviews with Mr. Crowder and could be defined as suspect. It would appear that the land swap will enable Mr. Crowder to engineer a most lucrative coup in buying land far below grazing land market value and sell it probably within 10 years at tremendous profits. While there is admittedly a risk involved in land buying and selling, it would appear the risk is being borne by the goverment.

One of Mr. Crowder's current investments, namely his country club, appears to be in some financial trouble. In a letter to a portion of his club's membership, Mr. Crowder has indicated he intends to literally confiscate privately-owned golf carts by increasing cart fees, already the highest in Texas and New Mexico. While this seizure may be legally defensible, it is highly unethical and contrary to previous understandings.

6-1 The Bureau of Land Management can do no more for the public than to make public the financial records of Mr. Crowder with attention on how he will finance this land swap and how such an investment will affect his present businesses, as well as how those who presently use this land for grazing and farming will be properly compensated.

Sincerely,

John H. McFall

JHMcF/pcm

6-1 The proposal is to exchange public lands in southern New Mexico for private land to which Mr. Crowder holds clear title. There is no indication how this transaction will affect his present business. Those using the land for grazing would be compensated for any structural improvements on the land as noted on page 3-2 of the Draft. There would be no compensation for loss of grazing privileges.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI
1201 ELM STREET
DALLAS, TEXAS 75270

MAR 1985

Mr. Marvin James
Chief, Planning and Environmental
Assistance Staff
Bureau of Land Management
Las Cruces District Office
P.O. Box 1420
Las Cruces, New Mexico 88001

Dear Mr. James:

We have completed our environmental review of your amendment for the Southern Rio Grande Plan, Dona Ana County, New Mexico.

We have no objections to the land transfer of 21,231 acres, from the Bureau of Land Management to the Navajo Tribe, as authorized under provisions of the Navajo and Hopi Indian Relocation Amendments Act. If we may be of further assistance please give us a call at (FTS) 729-2716.

Sincerely yours,

Clinton B. Spotts

Clinton B. Spotts
Chief, Federal Activities Branch (6ES-F)

NEW MEXICO DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR/SECRETARY
Box 3189/Las Cruces, New Mexico 88003
Telephone (505) 646-3007

March 19, 1985 03.30 JAMES.LTR

Mr. Marvin James, Chief
Planning and Environmental Assistance Staff
Bureau of Land Management
P. O. Box 1420
Las Cruces, New Mexico 88001

Dear Mr. James:

This letter provides our comments on the Southern Rio Grande Draft Plan Amendment, Navajo and Hopi Indian Relocation Amendment Act-Exchange.

8-1 The New Mexico Department of Agriculture is concerned about the loss of lands used for agricultural production. Under the proposed action, a total of 21,231 acres in the Santa Teresa area on three Bureau of Land Management allotments historically used for livestock grazing will be lost to development. We realize that a land exchange of this nature is required by law. It appears that although impacts to the individual allottees are regrettably severe, the actual loss of livestock production is minimal since two of the allotments have not had livestock on them for three years and only 11 percent of the carrying capacity of the third allotment will be lost. Considering (1) these impacts are minor in relation to the total agricultural production in Dona Ana County and the state, (2) an exchange is required by law, and (3) exchange of other suitable areas could result in more severe impacts on agriculture, we will not stand opposed to the transfer.

8-2 Aside from this general philosophical viewpoint, we are concerned about a potential adverse impact to the remaining allottees that may have the potential for mitigation. On pages 3-1 and 3-2 of the draft plan amendment it is stated that 1 1/2 and 9 1/2 miles of fence will be required on the La Union and Beacon allotments, respectively, to maintain their viability after the proposed action is implemented. Although under state law (77-16-1 NMSA 1978) any "person having lands or crops that would be injured by trespassing animals, shall make a sufficient fence about his land in cultivation, or other lands that may be so injured," it could conceivably be a number of years before the new landowner(s) in this transaction decide to construct such a fence. Indeed, they may never construct a fence.

8-1 Most of the land will probably remain in agricultural production, used for livestock grazing, for the next several years depending upon new land uses, regional economic conditions, and development schedules.

8-2 New Mexico State Law (77-16-1 NMSA 1978) states that "any person having lands or crops that would be injured by trespassing animals shall make a sufficient fence about his land in cultivation, or other lands that may be so injured." The fences that would need to be constructed to separate the remaining land in the La Union and Beacon Allotments from the private land would fall under this law. The private land owner(s) would be required to fence their land to prevent trespassing animals. Unless the private landowner(s) fence the land, livestock could continue to use these lands.

In summary the new land owner would be required to fence the private land to prevent cattle on adjacent allotments from straying on and grazing the private land.

Mr. Marvin James, Chief
March 19, 1985
Page 2

8-3 If, as stated on pages 3-1 and 3-2, such fences are necessary to "protect the viability" of the remaining adjacent allotments, then the remaining allottees may be forced into constructing and paying for the new fences. Although this may not be a problem in the eyes of the remaining allottees, we feel coordination, cooperation and consultation should be conducted with them pursuant to Section 8 of the Public Rangeland Improvement Act, as amended, and the New Mexico Rangeland Consultation, Cooperation and Coordination Policy, to assure that the remaining allottees' concerns are heard and addressed and that potential mitigation of adverse impacts is explored.

Thank you for the opportunity to comment.

Sincerely,

W. P. Stephens

William P. Stephens
Director/Secretary

WPS/gl

8-3 The NHIRAA exempts actions required under section 402(g) of the Federal Land Policy and Management Act as amended by the Public Rangeland Improvement Act (PRIA). Therefore, the requirements of Section 8 of PRIA do not apply in this case.

UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
Field Supervisor
Ecological Services, USFWS
Post Office Box 4487
Albuquerque, New Mexico 87196

March 20, 1985

Memorandum

To: Regional Director, Bureau of Land Management, Las Cruces District Office, Las Cruces, New Mexico

From: Acting Field Supervisor, FWS, Ecological Services, Albuquerque, New Mexico

Subject: Comments on the Draft Southern Rio Grande Plan Amendment for proposed land exchange, Dona Ana and Sierra Counties, New Mexico (BLM)

We have reviewed the subject document and find that it adequately describes fish and wildlife resource concerns in the area of consideration. Thank you for this opportunity to provide comments.

Tom O'Brien

Tom O'Brien

cc:
Regional Director, FWS, Habitat Resources, Albuquerque, New Mexico

10

SIERRA CLUB

EL PASO REGIONAL GROUP
P.O. BOX 9191 EL PASO, TEXAS 79983

March 20, 1985

Marvin James
Chief, Planning and Environmental Assistance Staff
Bureau of Land Management
P. O. Box 1420
Las Cruces, NM 88001

Dear Mr. James:

We have reviewed the draft Southern Rio Grande Plan Amendment for the proposed land exchange near Santa Teresa, New Mexico and have the following comments for your consideration.

CULTURAL RESOURCES (Page 2-5):

10-1 The document says that "the selected land was surveyed for archaeological remains." We assume that this was done using a sampling procedure. We do not think that a sampling is adequate in this case since, if the exchange takes place, the land will revert from federal control and potential these resources could be lost forever.

SOCIAL AND ECONOMIC CONDITIONS (Page 2-10):

10-2 The document states that the "land is located 6 miles northwest of the El Paso, Texas city limits." Our review of the maps indicate that the land is much closer to the El Paso city limits. It is probably no further than 1 - 2 miles. We think that this statement is misleading because it makes the land appear to be remote when in fact it borders the El Paso metropolitan area. Currently much residential and commercial development is taking place near the property.

10-3 The major impact of the exchange would be to El Paso, Texas. The document only discusses economic and social conditions in Dona Ana County, New Mexico and does not discuss El Paso, Texas. We think that this is a major omission and should be corrected.

RECREATION IMPACT (Page 3-3):

10-4 Because heavy ORV use would be displaced, we think that undue ORV pressure would be put on the Kilbourn Hole area and the Mount Riley-West Potrillo Wilderness Study Area. This would create additional management problems for these areas.

. . . To explore, enjoy, and protect the Nation's scenic resources. . .

10-1 The cultural resources survey was done using a sampling procedure. The sampling procedure was designed to determine if any sites potentially eligible for nomination to the National Register of Historic Places exist on the selected land. In addition, the sampling scheme would yield sufficient information to allow analysis of sites on the selected land. Most sites found were mitigated through intensive field analysis. Several sites on 980 acres consisting of complex residential features and historic railroad construction sites would require more substantial investigation. For these sites a patent restriction would be imposed which would require archaeological investigations approved by BLM, the State Historic Preservation Office, and the Advisory Council on Historic Preservation Act, prior to any form of disturbance.

10-2 The selected land is located approximately one to five miles west and northwest of El Paso City Limits, depending on the point of measurement. The text of the document has been corrected to show this.

10-3 The major impact of the exchange itself would be to Southern Dona Ana County. Subsequent development of the exchanged lands could have a significant impact on El Paso, depending on the type and extent of development. However, those impacts are speculative at best. It is unknown what uses other than grazing will be made of the subject land.

10-4 We acknowledge that recreation use of the selected land would be displaced and there would be additional pressure on the adjacent lands. This in turn could put ORV pressure on the Kilbourn Hole and Mount Riley - West Potrillo WSA. ORV use in the WSA is presently restricted to existing roads and trails. The area would continue to be managed under the Interim Management Policy (IMP) guidelines. Increased patrols of the area may be necessary in order to ensure compliance with the IMP.

Marvin James
Chief, Planning and Environmental Assistance Staff
Bureau of Land Management
Page 2
March 20, 1985

AIR RESOURCES IMPACT:

10-5 The document does not address the potential impact on air resources. El Paso, Texas is currently not in compliance with EPA air quality standards. This property is upwind from El Paso and its development could considerably affect the quality of air in El Paso and the attainment of EPA standards.

APPRAISAL:

No appraisal information was provided with the document. We think that this information is so critical in evaluating the exchange that the document is seriously faulted. We request that you send us copies of all appraisal documents. Because of the complexity of evaluating appraisals, we request a 90 day period to comment upon the appraisal.

This land should be valued at its highest and best use. Tentative figures indicate the land is valued at an average price of approximately $200 per acre. This would appear to be a gross understatement in our opinion since there is land for sale in the area for $4,000-$5000.

We request that, until the above items are addressed, that no further action be taken on the exchange.

Sincerely,

EL PASO REGIONAL GROUP
OF THE SIERRA CLUB

Thomas D. Brasfield

Thomas D. Brasfield
Conservation Chairman

10-5 See responses to Comments 1-1 and 10-3.

STATE OF NEW MEXICO
NATURAL RESOURCES DEPARTMENT
Santa Fe 87503
(505) 827-7835

TONEY ANAYA
GOVERNOR

LEO GRIEGO
SECRETARY

March 20, 1985

Mr. Marvin James, Chief
Planning and Environmental
Assistant Staff
Bureau of Land Management
P.O. Box 1420
Las Cruces, New Mexico 88001

Dear Mr. James:

Thank you for the opportunity to review and comment on the Draft Southern Rio Grande Plan Amendment; Navajo and Hopi Indian Relocation Amendment Act-Exchange released in January, 1985. Our Resource Management and Oevelopment Division staff have reviewed the document. Our staff working with threatened and endangered plant species concur with your findings that neither the Coryphantha sneedii var. sneedii, the Cereus greggii, nor the Opuntia arenaria have been found in the land selected for the exchange.

We encourage your continued consultation with the State Historic Preservation Division for the preservation of cultural resources within the area selected for exchange.

Sincerely,

Leo Griego

LEO GRIEGO
Secretary

EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

320 SOUTH CAMPBELL ST. • P.O. BOX 511 • EL PASO, TEXAS 79961 • PH. 915/533-9701

March 21, 1985

Mr. Marvin M. James
Chief, Planning and Environmental
Assistance Staff
Bureau of Land Management
PO Box 1420
Las Cruces, New Mexico 88001

RE: Draft Southern Rio Grande Plan Amendment

Dear Mr. James:

This letter contains the comments of the El Paso Water Utilities Public Service Board (the "Board") on the draft Southern Rio Grande Plan Amendment dated January, 1985.

In previous correspondence, the Board has described the pipeline alignment from its proposed Mesilla well field to El Paso following the road between Noria and Sunland Park, which crosses the property being considered for exchange. A copy of this correspondence is attached. Due to the importance of a pipeline right-of-way to its water supply, the Board has requested that the Bureau of Land Management ("BLM") either (1) not transfer the land along the road to a private owner, or (2) determine at this time, in writing, that another right-of-way route is available across BLM lands in the southern portion of the county.

On page 2-8 of the draft Plan Amendment, it is noted that the Board has asked BLM to reserve a parallel right-of-way along the abandoned railroad bed and proposed NMSHD highway as a future route for needed pipelines, whether for El Paso or others. The Plan Amendment then states that "[t]here is no authority, however, for BLM to reserve a third party right-of-way in a conveyance document." This is an incorrect statement.

The law is clear that "where the act under which a patent is issued gives discretionary authority to the Secretary in allowing the patent, ... he may qualify grants of benefits under the act by making them subject to certain limitations or restrictions." Arizona Public Service Company, 79 I.D. 67, 75 (1972). "The Department has recognized the principal that a discretionary conveyance by it may be made subject to reservations, neither explicitly Id. at 79. See also Southern Pac. Co. v. Olympian Dredging Co., 260 U.S. 205, 208 (1922). Such a reservation may be for the benefit of a third party. See, e.g., John L. Rice, 61 I.D. 175 (1953). The principle that only reservations specifically authorized by law may be inserted in patents applies only to "statutory provisions which place upon this Department the mandatory duty of

12-1

"WATER IS PRICELESS — USE IT WISELY"

22

12-1 The United States is required to make lands available for the relocation. The procedures under FLPMA are followed in processing an exchange to acquire suitable land for relocation. However, lands must be made available, and in this sense, the actions under the NHIRAA are non-discretionary.

BLM's, Field Solicitor for the Southwest Region has stated that in his opinion no authority exists for BLM to reserve in a patent a right-of-way not previously granted for the benefit of a third party at undetermined locations on or under the patented land. The Solicitor bases his opinion on the Supreme Court ruling in Davis's Administrator V. Weibbold, 139 U.S. 507 at 527 (1891). The main point of this ruling states, "Could they (Officers of the Land Department) insert clauses in patents at their own discretion, they could limit or enlarge their effect without warrant of law."

The patents will be issued subject to the existing rights-of-way. Designation of a right-of-way corridor in the southern portion of the lands proposed for exchange is unnecessary. Right-of-way use is presently in the northern and western portions of the subject land. Any designated corridor would probably follow and include existing rights-of-way. A designated corridor in which no right-of-way were located such as a "floating easement" would not be reserved in a patent to the United States for the benefit of a third party.

12-1 conveying public lands to persons who met certain requirements prescribed in the controlling legislation." Solicitor's Opinion, 60 I.D. 477, 478 (1957).

The Navajo and Hopi Indian Relocation Amendment Act states:

> The secretary is authorized and directed to -
>
> (1) transfer not to exceed two hundred and fifty thousand acres of land under the jurisdiction of the Bureau of Land Management within the State of Arizona and New Mexico for the Navajo Tribe: Provided, That, in order to facilitate such transfer, the Secretary is authorized to exchange such lands for State or private lands of equal value. . .

25 U.S.C. 640d-10.

Although the transfer of 250,000 acres of land to the Navajo Tribe is mandatory under this Act, the exchanges of land to facilitate the transfer are clearly not mandatory. The Act authorizes the Secretary to make exchanges; it does not "place upon the Department the mandatory duty of conveying public lands to persons who met certain requirements."

12-1 Therefore, BLM may reserve a right-of-way along the Noria and Sunland Park Road. The Board believes that this reservation would be beneficial to the public interest in limiting rights-of-way to designated corridors, as well as beneficial to El Paso's water supply.

Alternatively, BLM could declare a new designated right-of-way corridor in the southern portion of the county. This would allow the Board to obtain an easement across federal land if necessary, while limiting rights-of-way on federal land.

Thank you for your attention in this matter.

Very truly yours,

John T. Hickerson

John T. Hickerson
General Manager

JTH:rq

13

March 21, 1985

1985 MAR 21 PM 1:18

Mr. Marvin James
Bureau of Land Management
P.O. Box 1420
Las Cruces, New Mexico 88001

Dear Sirs:

I, Rodney J. Bunsen, have full power of attorney to represent Nora Green, and what is known as the James A. Wilson Ranch. You are aware of the fact that the the ranch has been in the family since 1926. The family has withstood many years of hardship on the ranch, through drought, low cattle prices, etc., but has never in fifty nine years, considered selling the ranch or not renewing the B L M 10,032 acres of leased land. Now that there is an opportunity to purchase the B L M portion through a land exchange, we have not been given an opportunity to do so, as so stated in several articles. I know that there is no law that states that the B L M is required to give us the first right of refusal to purchase the land, but after 59 years of leasing the land, when, many times the B L M could never have gotten another party to take the lease in bad times, the Wilson family still scrapped the payment up to hold the ranch together.

13-1

We are only asking the B L M to at least consider our offer to exchange the B L M portion of our ranch for deeded property selected by the Navajo and Hopi Indian Relocation Commission.

We propose an exchange of at least 50% greater in land (or value) than Charles Crowder has proposed. We will exchange for the 10,032 acres of B L M property, leased by the Wilson family, and the B L M can in return be able to keep the 8730 acres from the Beacon Ranch, 1,748 acres from the La Union Ranch and 1,435 acres in the Hillsboro, New Mexico area.

In return we will purchase an exchange rate 50% greater than what Charles Crowder is offering or will offer. If you the B L M prefer, we will accept in the exchange the B L M portion of the Nora Green (Wilson) Ranch, 10,032 acres, the Beacon Ranch 8,730 acres, the La Union Ranch, 1,758 acres, unalloted 711 acres, for the total of 21,231 acres.

13-1 NHIRAA provides for the exchange of public land for private land selected by the Navajo Tribe. Public land under the jurisdiction of BLM in Arizona and New Mexico may be used for the purpose of exchanging. Under such an exchange there is no legal basis or requirement for preference to be given to a grazing lessee. The exchange is based on equal value of the selected and offered land.

The exchange proponent controls the land which the Navajo Tribe has selected; therefore, he is the one with whom BLM is working to perfect the exchange.

In being granted the exchange of the 21,231 acres of B L M property, we propose to purchase and exchange 50% greater acreage (or value) than what is offered by Charles Crowder, which, I understand, is approximatley 41,649 acres. Hereby the Navajo and Hopi reservations will be increased from 41,649 (more or less) to approximately 60,000 acres, at no expense to the B L M, or the Navajo or Hopi Tribes.

I have been in contact with the Navajo and Hopi Relocation Commission and they have voiced a great interest in my proposal. The commission furnished a list of several ranches that are still available for purchase and exchange and I have been in contact with them.

I believe this to be more than a fair offer, and the exchange should be considered an excellent offer, far and above what Charles Crowder has offered.

Sincerely,

RODNEY J. BUNSEN
RT. 1
Quemado, Texas 79977
Phone (512) 757-1247
El Paso Phone (915) 592-6475
or (915) 584-4951

cc: Jeff Bingaman
United States Senator

cc: Pete Domenici
United States Senator

cc: Joe Skeen
United States Congressman

cc: Tony Anaya
Governor of New Mexico

14

Dona Ana County Associated Sportsmen, Inc.

P. O. Box 1417 Las Cruces, N. M. 88001

Dedicated to The Conservation of Soils, Forests, Waters, Wildlife, and All Natural Resources

Affiliated with
NEW MEXICO WILDLIFE FEDERATION

March 21, 1985

Marvin James
Chief, Planning and Environmental Assistance Staff
Bureau of Land Management
P.O.Box 1420
Las Cruces, N.Mex. 88001

Ref: Southern Rio Grande Plan Amendment
Navajo and Hopi Indian Relocation Amendment Act - Exchange

Dear Mr. James:

The Dona Ana County Associated Sportsmen, Inc., voted unanimously at our meeting on March 19, 1985, to go on record as opposed to this exchange. We object to giving away New Mexico Public Lands for the reasons given in the proposal.

14-1 You stated on page 1-1 of this proposal that the Federal Land Policy and Management Act (FLPMA) of 1976 declares that public land should be retained in Federal ownership unless the disposal of a particular parcel will serve the National interest.

It would appear that this exchange would only benefit the Navajo and Hopi Indians and a Mr. Charles L. Crowder, who we understand is a private developer. We fail to see how this is in the National interest.

14-2 Secondly, where will the people who now use this land for recreation go.? They will just put added pressure on adjacent public lands.

As we did not receive a copy of this january 1985 Draft until we received it from the Mesilla Valley Audubon Society, we could not respond at an earlier date.

As a conservation organization, we are always concerned about what happens to our public lands.

We sincerely hope that you will select the "No Action" alternative and maintain these lands in public ownership.

Sincerely,

Gary Webb, President
DONA ANA COUNTY ASSOCIATED
SPORTSMEN, Inc.

cc: U.S. Representative Joe Skeen
U.S. Senator Jeff Bingaman
U.S. Senator Pete Domenici

14-1 The provisions of the NHIRAA are non-discretionary in that the Secretary of Interior must make land available to satisfy the requirements of the Act.

14-2 Substantial public lands suitable for recreational uses are available to the north and west of the selected land.

15

Manager
ROBERT L. SMITH

Commissioners
FRANK (Pancho) SALOPEK
SALVADOR GONZALEZ
RAY B. LUCHINI
JAMIE A. STULL
PETER COOPER

Dona Ana County

OFFICE OF THE COUNTY MANAGER
251 W. Amador, Rm-207 Courthouse, Phone 523-5634
Las Cruces, New Mexico 88005-2894

March 22, 1985

HAND-DELIVERED

Mr. Marvin James
Las Cruces District Office
1800 Marquess Street
P. O. Box 1420
Las Cruces, New Mexico 88004

RE: Comments to the Southern Rio Grande Plan Amendment by the County of Dona Ana, New Mexico

Dear Mr. James:

The County of Dona Ana, New Mexico, makes the following comments as to the Southern Rio Grande Plan Amendment:

1. Page 1-5, under "Consistency with Other Plans": The Preferred Alternative is inconsistent with the Memorandum of Understanding (MOU) dated April 21, 1982 between BLM and the County of Dona Ana regarding approximately 237 acres for the expansion of the Dona Ana County Santa Teresa Airport for future needs.

15-1 2. Page 2-8, under "Other Land Uses": Under the MOU, BLM agreed to consult with Dona Ana County prior to and disposition for use authorization on the subject land on either a temporary or other time basis. The management objective is to preserve the option to expand the airport in the future. No construction will be authorized other than range improvements connected with livestock operations. Access will be limited to existing roads and trails. The District Manager will consider the subject lands in all BLM planning efforts.

15-2 3. Page 3-3, under "Other Land Uses": Development of lands adjacent to the Dona Ana County Santa Teresa Airport would hinder the expansion of the airport. The 237 acres in question would be suitable for airport expansion. Dona Ana County cannot expand in a westerly direction because of the Southern Pacific Railroad. Although the Federal Aviation Administration (FAA) has evaluated the land needs for expansion of the airport, the County of Dona Ana has made a determination as set forth in the MOU that it has future needs and plans over and above FAA recommendations and FAA agrees that there may be other needs and plans of the County of Dona Ana to warrant the MOU.

15-1 The inconsistency with the MOU is noted on page 2 of the Final Plan Amendment. At the present time, BLM and Dona Ana County are revising the MOU to consider land to the north and northwest of the airport boundary to meet future needs of the county.

15-2 By letter to BLM dated January 11, 1985, (see Appendix B) the FAA stated that it could not support the additional land requested by the county based on the county's 20 year projected use of the airport. However, it is noted that the county may have other needs and plans which would warrant acquisition of additional land in the future. Although public land east of the airport is included in the exchange proposal, public land is available to the north and northwest of the airport that could be used for these other future needs.

The County of Dona Ana, New Mexico adopts and incorporates by references its protest as set forth in its letter of December 21, 1985.

Sincerely,

Robert L. Smith
County Manager

RLS/dw

cc: Board of County Commissioners
Les Olson, County Planning Director
Lewis Batsell, Airport Manager
Dan Rathbun, BLM
Madeline Dzielak, BLM
Patrick A. Fort, Assistant District Attorney
C. L. Crowder, Santa Teresa

CHANGES AND ADDITIONS TO THE DRAFT AMENDMENT

INTRODUCTION

This section contains revisions made to the Draft Plan Amendment based on new or more complete information or errors and omissions identified through the public review process.

The following changes are relatively minor and consist of editorial changes and new information added to the Draft. These changes are to be incorporated into the Draft Plan Amendment.

CHANGES TO TEXT AND TABLES

Text

Page 1-2, first paragraph, line 2. Change 6 miles west to 1 to 5 miles west and northwest

Page 2-2, first paragraph under Livestock Grazing, after line 6 add: In January 1985 Charles E. "Chip" Johns purchased the Beacon and La Union Allotments.

Page 2-10, first paragraph under Economic Conditions, line 2. Change 6 miles northwest to 1 to 5 miles west and northwest.

Page 3-3, paragraph 7. Delete the entire paragraph.

Page 3-4, paragraph 7, line 5. Change owners to permittee(s).

Tables

Table 2-1, line 2, Column 4 and Column 5. Change 366 to 411 and change 338 to 383.

Table 4-1, Column 2, second entry. Change Trinity College to Trinity University.

APPENDICES

APPENDIX A - HILLSBORO TRACT

An additional 1,435 acres of public land in the Hillsboro, New Mexico area has been added to the Navajo and Hopi Indian Relocation Amendment Act exchange proposal. This public land has been identified as suitable for disposal in the original Southern Rio Grande Land Use Plan (BLM 1982); therefore, it is not discussed in this plan amendment. The land consists of three separate isolated tracts with the following legal descriptions:

T. 15 S., R. 8 W., NMPM
Section 21: Lots 1, 2, 3, 6, 7, 8
Section 22: N½, N½SW¼, NW¼SE¼

T. 15 S., R. 8 W., NMPM
Section 23: W½SE¼, SE¼SE¼
Section 25: SW¼NW¼
Section 26: NE¼

T. 15 S., R. 8 W., NMPM
Section 35: S½, SW¼NW¼, S½NE¼

The present proposal now involves 21,231 acres discussed in this plan amendment plus the 1,435 acres described above for a total of 22,666 acres of public land to be exchanged for 41,166 acres of private land of equal value in northern Arizona.

APPENDIX B - FAA LETTER

U.S. Department of Transportation
Federal Aviation Administration

AIRPORTS DISTRICT OFFICE
2930 Yale, SE., Room 109A
Albuquerque, N.M. 87106

11 JAN 1985

Mr. Daniel C. B. Rathbun
District Manager
USDOI - BLM
P. O. Box 1420
Las Cruces, NM 88001

Dear Mr. Rathbun:

This is in reply to your letter of December 20, 1984, regarding potential disposal of land adjacent to the Santa Teresa Airport.

Dona Ana County submitted an application dated August 20, 1980, for transfer of 2480 acres of U.S. Government land for development of the Santa Teresa Airport. We could support the need for only approximately 1700 acres of the requested land based on the 20-year forecasts of aviation activity contained in their master plan report. When we advised them of this, they indicated that they wanted to preserve areas for industrial park development and future parallel runway construction. Since land for industrial parks could not be obtained under Section 23 of the Airport and Airway Development Act and since the need for a parallel runway was not within the forecast period, we advised the County by letter dated November 17, 1980, a copy of which is enclosed, that they would have to contact BLM to discuss acquisition of more than the approximately 1700 acres that we could recommend for airport purposes.

We wrote to the County again on February 12, 1981, regarding our lack of justification for the additional land they wished to acquire. A copy of that letter also is enclosed.

Subsequently, you transferred the property which we recommended for airport purposes and entered into the April 21, 1982, Memorandum of Understanding with Dona Ana County regarding the additional adjacent property.

Edward Warren First American Aloft

We are not aware of any additional information developed since 1981 which would justify our recommending any expansion of the airport property lines based on present or foreseeable future requirements. However, the County may have some non-airport needs and some ultimate plans beyond our forecast period which compel them to protest the proposed disposal of the adjacent property covered by the Memorandum of Understanding. Since we were not involved in the original determination of ultimate need for that additional land, we are unable to provide much assistance in determining the continuing need to preserve its availability.

If we can furnish any additional information that would be helpful, please let us know.

Sincerely,

Bill J. Howard
Manager, Airports District Office

2 Enclosures

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